



FEDERAL BUREAU OF INVESTIGATION

WATERGATE (SUMMARY)

PART 2 of 2

FILE NUMBER : 139-4089

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WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

October 16, 1975

ROUTE TO D.O. FOR SIGNATURE, *please*
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Honorable Clarence M. Kelley
Director
Federal Bureau of Investigation
Washington, D. C. 20537

Dear Clarence:

James Walton M. Ford

I am enclosing a copy of a Report covering the activities of the Watergate Special Prosecution Force from May 1973 to September 15, 1975.

As you know, we have relied heavily on the Bureau for investigative assistance in many extremely important areas of our work. I want to express my personal appreciation to you and to each of the agents and the supervisory personnel who cooperated so well in the mission of this Office.

Best wishes.

Sincerely,

Henry S. Ruth

HENRY S. RUTH, JR.
Special Prosecutor

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SUMMARY OF OCTOBER, 1975 REPORT OF
WATERGATE SPECIAL PROSECUTION FORCE

The Report of the Watergate Special Prosecution Force (WSPF) describes the work of WSPF during the 28-month period from May 25, 1973 when Archibald Cox took office as Special Prosecutor to September 15, 1975. The work produced more than fifty criminal convictions of individuals and pleas of guilty from nineteen corporations. These matters included eleven completed or pending trials of which six were held in Washington, D.C. and five were held or are scheduled in various cities around the Nation.

In addition to reporting on the investigations and trials WSPF undertook and completed, the Report describes the process by which decisions were made as to the investigations to be undertaken, the persons to be charged and the charges to be brought, including decisions concerning plea negotiations. However, the Report does not set out facts about individual cases or criminal charges other than those that have been presented in court or otherwise made public, because, as explained in the Introduction to the Report, to do so would be inconsistent with fundamental protections which our system of justice accords to individuals.

The Report describes in detail the Special Prosecutor's efforts to obtain tapes, documents and other information and

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material of the Nixon Administration starting immediately after Cox's appointment and continuing for several months after President Nixon's resignation. It also describes the deliberations and the actions of the Special Prosecutor relating to the possibility of criminal charges against President Nixon and the cooperation between WSPF and the House Judiciary Committee during that Committee's investigations and deliberations about possible impeachment.

Finally, the Report states some concluding observations and makes a series of recommendations based upon the experience of the prosecutors during their 28-months' work. Since the Prosecution Force was not a commission or study group, the proposed recommendations are not intended as a comprehensive finding as to the changes needed to prevent and challenge abuses of power. A detailed series of appendices follows the main body of the Report.

There are summarized below those chapters of the Report setting forth WSPF's recommendations, the policies and procedures of WSPF including decisions about prosecutions to be undertaken and about plea bargaining, descriptions of major investigations, efforts to obtain evidence from the White House, and actions related to possible criminal prosecution against President Nixon.

WSPF Recommendations (Chapter 5)

1. Protecting the Integrity and Effectiveness of the Prosecution Function

Among recommendations seeking to insulate the Department of Justice from political pressure were the following:

- Neither the campaign manager nor any other top officials of the President's campaign should become Attorney General.
- The Hatch Act should apply to all Justice Department employees.
- A written record should be maintained of all outside contacts with Justice Department officials concerning pending matters.
- A new unit with adequate resources should be established within the Justice Department to investigate and prosecute corruption cases.
- An Office of Permanent Special Prosecutor should not be established.
- The organized bar and the courts should clarify and more actively inquire into possible conflicting interests in one attorney's representation of both higher-level and lower-level employees during a federal investigation of the leadership's conduct in hierachial organizations, such as corporations, labor unions and government agencies.
- In order to ensure a continuous flow of information from cooperating witnesses, the Freedom of Information Act should be clarified to protect absolutely information obtained confidentially by law enforcement agencies.

2. Protecting the Integrity of Executive Branch Functions in Law Enforcement

- Congress should exercise effective oversight of enforcement and intelligence agencies through

regular review of agency policies, internal inspection procedures and other checks on how sensitive functions are being performed.

- A constitutional amendment should clarify if and when a President in office is subject to criminal prosecution.

3. Control of Intelligence and National Security Functions

- All intelligence agencies should issue written policies setting forth types of domestic intelligence to be gathered and methods to be used. These policies should be reviewed by a domestic intelligence policy review board.
- The Administration should clarify its present policy on warrantless searches and seizures in connection with foreign intelligence investigations.

4. Political Financing and Campaign Tactics

- The Department of Justice should take the initiative in undertaking investigations and prosecutions for campaign financing violations without waiting for referral of complaints from other agencies or individuals.
- Individual responsibility for the various reporting requirements of a campaign committee under the Federal Election Campaign Act (FECA) should be extended to include committee chairmen, rather than just the treasurers of such committees.
- The statute of limitations on election law violations, amended retroactively in the middle of WSPF's work to a three-year period, should be restored to the five-year period applicable to almost all other federal crimes.
- Several amendments are needed to the FECA provisions barring corporate contributions and contributions by a government contractor in order to clarify the extent and nature of the criminal prohibitions and make them more consistent in approach to the problems of campaign financing. (See pp 149-152 of Report)

- The authority of the Federal Election Commission should be broadened with respect to "dirty tricks" to enable it to promulgate standards of unaccepted campaign conduct.

WSPF Policies and Procedures for Investigation and Prosecution
(Chapter 2)

A. Beginning Investigations

The Report describes the various sources of information on the basis of which decisions were made to undertake investigations. It notes that with respect to some areas of its responsibility, WSPF began with the benefit of prior investigative work by other agencies while with respect to others, little prior work had been done. It describes the Special Prosecutor's decision to utilize the FBI as its principal investigating agency, a decision that Cox reached only after satisfying himself that alleged improprieties by some former high FBI officials did not involve those who would be responsible for work undertaken for the Special Prosecutor.

B. The Investigative Process

The Report details the various investigative techniques used by WSPF, noting similarities and differences in comparison with other "white-collar" crime investigations.

Among the differences were the special problems resulting from the White House's refusal to make available important evidence, the intense interest of the news media, and WSPF's need to maintain public support in view of the threat its work presented to the President and others in high positions.

The Report describes the various methods used for obtaining information from witnesses, including FBI interviews, office interviews and bringing the witness before the grand jury and the role each of these methods played in WSPP's investigations. It notes that only about 30 of the several hundred witnesses who were interviewed were granted immunity as a means of obtaining crucial information. An important reason for this was WSPP's belief that most of those who were at relatively "low" levels of the conspiracies and other wrong-doing it was investigating held important positions of public trust and were not entitled to complete immunity. Whenever possible in such situations, WSPP sought to obtain the information it needed on the basis of a plea bargain in order that a court could impose an appropriate penalty.

C. Charging and Disposing of Cases

The Report analyzes the bases on which WSPP decided whether to charge persons and what particular charges to bring. The case involving the burglary of the office of Dr. Fielding, Daniel Ellsberg's psychiatrist, is used as an example to describe the factual and legal considerations that led to rejection of certain charges and the decision to bring others - in that case conspiracy to violate Dr. Fielding's Fourth Amendment rights to not be victimized by an illegal search and seizure.

The Report describes the issues the Special Prosecutor faced in deciding whether to bring perjury charges and whether to invoke the federal conspiracy statute in those cases where it appeared to be applicable.

The Report also explains why instead of using the minimum required standard of proof for a grand jury indictment, the Special Prosecutor sought to use a higher standard and thus sought indictments only when all the available evidence, including the defendant's explanations, seemed likely to result in a guilty verdict at trial.

The Report indicates the special circumstances that in some cases led the prosecutors to believe leniency was justified in making charging decisions. Thus, in a few cases the defendant's health was taken into account. In others, the defendants seemed to have relied on advice of counsel as to the legality of their actions or on prior non-enforcement decisions by government agencies.

Plea Bargaining

Without plea bargaining the Special Prosecutor would have been able to convict only a small number of the persons who were shown on investigation to have committed crimes. Information obtained by plea bargaining was crucially important in many of the major prosecutions and convictions.

The Report describes Special Prosecutor Cox's offer of leniency to corporations which volunteered information about their violations of the campaign financing laws. The reasons for Cox's policy, which was adhered to by each succeeding Special Prosecutor, are described in full in the Report and include proof difficulties, prior lack of enforcement and corporate disclosure of prior practices. The volunteer policy resulted in guilty pleas by 12 corporations and 10 corporate officers. These pleas, and others that followed in the campaign contributions area, marked the first time in many years that corporate officers had been convicted for consenting to illegal contributions.

The Report describes WSPF's concern that guilty pleas involve admission of guilt to a sufficiently serious charge to enable the judge to impose an appropriate sentence. In general the Special Prosecutor was willing to accept a plea to one felony charge. Most federal felonies permit a five-year maximum sentence. WSPF also believed that guilty pleas should resolve the issue of the defendant's guilt or innocence of the underlying conduct which the evidence established. Thus, WSPF refused to accept pleas if the defendant was asserting his innocence in court at the time of the plea, and, with one exception involving one of the first campaign-law violators to come forward voluntarily, refused to accept pleas of nolo

contendere. In a few other situations the Special Prosecutor was willing to accept guilty pleas that did not fully meet these concerns, and the Report sets out the range of considerations that led to the acceptance of such pleas.

The Report also notes that in considering a plea agreement, WSPF was concerned that where subordinates had been convicted and sentenced, the principle of proportionality prevented accepting a plea to a lesser charge from a person who had directed his criminal activities.

Major Investigations and Other Actions (Chapter 3)

The most important work of WSPF's five task forces and the counsel's office is summarized in Chapter 3 of the Report. Not included are large numbers of investigations which involved a relatively minor commitment of office resources and a lesser number of investigations, requiring more substantial efforts, which have not been publicly disclosed in the past and which did not result in charges. Reporting them would publicize, for the first time and in an improper forum, allegations from which the prosecutors concluded they should not initiate court action for the various reasons cited in Chapter 2. In the investigations included within this chapter, allegations are cited if they have already received extensive publicity or if they had become public through court proceedings, legislative inquiries or other forums.

A section of the work of the Watergate Task Force briefly describes its three investigations. The Watergate cover-up investigation resulted in the prosecution and felony conviction of eight men formerly associated with the White House or the President's Campaign Committee. On January 15, 1974, a panel of tapes' experts appointed by Judge Sirica concluded that an 18 1/2 minute gap in a subpoenaed Presidential tape recording of June 20, 1972 had been produced by at least five separate hand operations of the stop and record buttons of a Uher 5000 machine, the same model used by the President's secretary, Rose Mary Woods, in transcribing the tape. Since the experts' report made it clear that the gap had been caused by intentional erasures, and evidence produced at earlier hearings showed that the erasures had occurred after the tape had been subpoenaed, Judge Sirica had referred the matter to the grand jury for further investigation of the possibility of obstruction of justice. A grand jury, assisted by WSPP and the FBI, concluded from the testimony of over 50 people that a very small number of persons could have been responsible for the erasures, but it was unable to obtain evidence sufficient to prosecute any individual.

Another matter which arose as part of the Watergate cover-up investigation was an inquiry into President Nixon's submission of Presidential tape transcripts to the House Judiciary

Committee on April 30, 1974. Comparison of the President's submission with transcripts in WSPF's possession showed that the President's version contained several omissions of portions of conversations. After an investigation, WSPF concluded that there is strong circumstantial evidence that at least some of the lengthy deletions were deliberate, but no prosecution was possible for reasons outlined in the Report.

The Report also describes the work of WSPF's "Dirty Tricks" task force. The "Dirty Tricks" investigation, which resulted in convictions of Donald Segretti and Dwight Chapin, sprung from reports that President Nixon's re-election campaign had included an undercover network of agents who had engaged in various kinds of political espionage and sabotage against candidates for the Democratic Presidential nomination. The reported activities included forging letters and other literature which unfairly attacked some candidates, planting manufactured stories in the press, copying documents from campaign files, and recruiting people to ask embarrassing questions at candidates' rallies or to picket such rallies on behalf of opposing candidates. WSPF also received and investigated allegations about possible "dirty tricks" by agents of Democratic candidates directed against President Nixon's campaign.

WSPF's ITT task force investigated allegations that the Department of Justice had settled three antitrust suits in 1971 against International Telephone and Telegraph Corporation (ITT), one of the Nation's largest conglomerates, in return for ITT's alleged offer to help finance the 1972 Republican National Convention. These investigations included the possibility that perjury had been committed in the 1972 confirmation hearings of Richard Kleindienst to become Attorney General and an allegation that a Securities and Exchange Commission (SEC) inquiry had been obstructed by ITT's failure to produce certain documents. The Report summarizes these investigations and additional allegations that the Kleindienst hearings had been illegally obstructed; that crimes had been committed in connection with the transfer of documents relating to ITT from the SEC to the Justice Department; that ITT had been granted a favorable tax ruling by the Internal Revenue Service as a result of improper influence or fraud; that improper influence had been applied to the Justice Department's handling of the antitrust suits against ITT, apart from the 1971 settlement; that improper influence had been used in securing the agreement of another corporation to merge with ITT; and that perjury had been committed by various people before Congressional Committees, the SEC, and the grand jury. Richard Kleindienst and Howard Reinecke were convicted by this Task Force.

The "Plumbers" task force investigated and prosecuted those responsible for a break-in in September 1971 at the Los Angeles offices of Dr. Lewis Fielding, conducted to secure the psychiatric records of Fielding's former patient, Daniel Ellsberg. At the time of the break-in, Ellsberg was under indictment for his role in the alleged theft of the classified "Pentagon Papers." The report recounts that prosecution, which resulted in the conviction of six individuals, and a number of other investigations undertaken by WSPP's "Plumbers." These included investigations of other break-ins, a "national security" wiretap program, the alleged misuse of federal agencies, the alleged mistreatment of demonstrators, and an inquiry into President Nixon's tax returns.

The Report also details the work of the Campaign Contributions task force, which systematically examined the campaign finances of major 1972 Republican and Democratic Presidential candidates. This examination included the investigation of several hundred separate transactions, including corporate and labor union contributions, recipients' non-reporting of contributions and expenditures, and alleged quid pro quo relationships between contributions and Government actions. The Report specifically describes investigations into the alleged sales of Ambassadorships, contributions made by

Associated Milk Producers, Inc., the "Townhouse" program, the Hughes-Rebozo allegations and an inquiry into the National Hispanic Finance Committee. In total, the Campaign Contributions Task Force convicted 32 individuals and 19 corporations.

Chapter 3 concludes with a summary of the work of WSPF's legal issues task force, the Office of Counsel to the Special Prosecutor.

Efforts to Obtain Evidence from the White House (Chap. 4, first section)

From the first days of Special Prosecutor Cox's tenure until many months after President Nixon's resignation, much of WSPF's energy and concern was devoted to a continuing struggle with the White House to obtain tapes, papers and other evidence that were under President Nixon's control during his incumbency.

The Report describes Cox's early efforts in May and June, 1973, to obtain papers and to insure that White House files containing items he might need would not be tampered with. It details the decision to seek tapes after their existence became known in July, 1973, including the process of identifying for a subpoena the particular tapes which would establish whether John Dean or the President were telling the truth about the President's knowledge and involvement. The negotiations between Cox and the White House and litigation over the grand

jury's subpoena which led in October 1973 to Cox's dismissal are also described. The public uproar over Cox's firing led the President to agree to comply with the subpoena, and the Report describes the disclosure that two of the tapes were missing and one had an 18 1/2 minute gap and the resulting investigation. It details Special Prosecutor Jaworski's continuing efforts to obtain additional materials and the issuance in April 1974 of a subpoena for 64 tapes needed for the Watergate trial and the ensuing litigation resulting in the United States Supreme Court's unanimous decision on July 24, 1974, requiring that these tapes be turned over to the Special Prosecutor.

After President Nixon's resignation WSPF took immediate action to prevent tapes and documents from the White House from being shipped to California and there ensued complex negotiations and litigation, described in the Report, resulting in the Special Prosecutor's obtaining access to the materials he believed he needed to complete his task.

Actions Related to President Nixon's Possible Criminal Liability (Chap. 4, second section)

Section B of Chapter 4 describes the issues facing the Special Prosecutor relating to the possible criminal liability of President Nixon. The background is John Dean's testimony

in June, 1973 before the Senate Select Committee implicating the President in discussions of executive clemency for Watergate burglar E. Howard Hunt and the decision to pay Hunt "hush money." Dean's version was corroborated and added to by the March 21, 1973 tape which WSPF obtained following the "Saturday night massacre" in late October 1973.

The Report describes the deliberations of WSPF on whether President Nixon could and should be indicted and Special Prosecutor Jaworski's decision not to recommend such an indictment to the grand jury, but instead to transmit evidence pertinent to the President's involvement to the House Judiciary Committee which was then considering impeachment. The Report details the steps leading to this information reaching the House Committee and describes the cooperation between the Committee and WSPF that resulted in additional information and assistance being made available to the House Committee. On July 29, 1974 the Committee included in Article II of its Articles of Impeachment a charge that the President had "knowingly misused the executive power by interfering with agencies of the federal government," and included WSPF among the agencies listed.

The Report also details the decision to name President Nixon an unindicted co-conspirator in the Watergate indictment.

After President Nixon resigned, Special Prosecutor Jaworski decided that he would defer any possible criminal action against the former President until the Watergate cover-up jury was sequestered and the trial had started. His purpose was to avoid exposing the jurors to additional pre-trial publicity. The result of this decision was that Nixon, if charged with complicity in the Watergate cover-up, would have been tried separately from Haldeman, Mitchell, Ehrlichman and the other alleged co-conspirators originally charged.

The Report describes Jaworski's meeting with Phillip Buchen, Counsel to President Ford, in which the Special Prosecutor told Buchen that the pre-trial publicity required a delay of at least 9 to 12 months before a jury could be selected and at which he gave Mr. Buchen a list of ten matters pending before WSPF which "may prove to have some connection to activities in which Mr. Nixon is personally involved," but as to which WSPF lacked evidence of a probable criminal violation.

On September 8, President Ford pardoned Mr. Nixon. On October 12 Special Prosecutor Jaworski wrote Attorney General Saxbe a letter accompanying his resignation in which he explained his reasons, included in the Report, for not challenging the pardon.

In addition to the 154 pages in the main body of the Report summarized above, the Report included 13 appendices. They include a complete status report of all cases handled by WSPF up to September 15, 1975, a detailed organizational history of WSPF, a description of the relationship of the Special Prosecutor with the Attorney General and with various federal agencies and legislative committees, a detailed chronology of Watergate events as they related to WSPF's work, and a comprehensive bibliography of the extensive public materials relating to matters investigated by WSPF.